In the Supreme Court of the United States

OCTOBER TERM, 1977

No. 77-1366

GILES LOWERY STOCKYARDS, INC. D/B/A LUFKIN LIVESTOCK EXCHANGE,

Petitioner,

vs.

THE U. S. DEPARTMENT OF AGRICULTURE AND THE PACKERS AND STOCKYARDS—AMS,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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Reference Note:

As of January 1, 1978, pursuant to an internal reorganization of the U. S. Department of Agriculture, the Packers and Stockyards Administration became a division of the Agricultural Marketing Service branch of the Department of Agriculture. Hence, Petitioner refers to the Packers and Stockyards—AMS, instead of the Packers and Stockyards Administration.

Petitioner will additionally refer to the Packers and Stockyards—AMS as "Agency."

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Fifth Circuit, pertaining to this cause, is reported at 565 F.2d 321 (C.A.—5th 1977). It is submitted in Appendix "A".

The opinion of the Judicial Officer of the U. S. Department of Agriculture, pertaining to this cause, is reported at 35 A.D. (Agriculture Decisions) 267 (1976). It is submitted in Appendix "B".

The opinion of the Administrative Law Judge of the U. S. Department of Agriculture, pertaining to this cause, was not reported. It is submitted, too, in Appendix "C".

JURISDICTION

Dates of Decision and Judgment:

The decision and judgment of the U. S. Court of Appeals for the Fifth Circuit was issued December 27, 1977.

The Petitioner did not seek a rehearing of its cause in the Court of Appeals.

Statutory Basis:

This cause originated as an administrative law proceeding initiated by an agency of the United States Government. It reached the Fifth Circuit for the U. S. Court of Appeals by virtue of the jurisdiction conferred in 28 U.S.C. 2342 (2). The Supreme Court has jurisdiction to review a decision of the U. S. Court of Appeals by granting

Writ of Certiorari, 28 U.S.C. 1254 (1), 2350; and Rule 19 (1), Revised Rules of the Supreme Court of the United States of America.

Statement:

In addition, Petitioner points out that essentially the same question raised in this Petition is being brought to this Court's attention in a Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Eighth Circuit in a cause styled:

CENTRAL ARKANSAS AUCTION SALE, INC.; MAJOR LEWIS, D/B/A MAJOR LEWIS LIVESTOCK AUCTION SALES; BILL RICE AND LOIS RICE, D/B/A CLEBURNE COUNTY LIVESTOCK AUCTION SALE; AND TRAVIS McGEE, D/B/A ATKINS LIVESTOCK AUCTION,
Petitioners,

vs.

THE U. S. DEPARTMENT OF AGRICULTURE
AND
THE PACKERS AND STOCKYARDS—AMS,
Respondents,

from a decision issued February 10, 1978, No. 77-1452, *Central Arkansas Auction Sale, Inc.* v. *Bob Bergland,* and reported at ..... F.2d ..... (C.A.—8th 1978) (not reported as of this writing). This cause involves quite similar facts and utilizes a good deal of the Decision and Order of the Judicial Officer, Appendix "B", of the *Giles Lowery* case.

QUESTIONS PRESENTED

1. CAN THE AGENCY SEEK IN 1974 TO "STAMP WITH APPROVAL", THROUGH AD HOC LITIGATION, A METHODOLOGY, ITS RATE ANALYSIS, WHICH IT HAD FORMULATED, ADOPTED, AND APPLIED SINCE AT LEAST 1970, BUT WHICH IT HAD NEVER ANNOUNCED TO THOSE TO WHOM IT APPLIED ITS RATE ANALYSIS?
2. IS THE DECISION AND ORDER OF THE JUDICIAL OFFICER DEFECTIVE FOR ITS LACK OF REFERENCE TO ASCERTAINABLE STANDARDS?

STATUTES AND REGULATIONS INVOLVED

The statutes and regulations involved are:

The Packers and Stockyards Act, 1921, 7 U.S.C. 181 *et seq.* and related regulations found at 9 CFR Chapter 2, and more specifically

7 U.S.C. 201

7 U.S.C. 202

7 U.S.C. 206

7 U.S.C. 207

9 CFR 203.8

The Administrative Procedure Act, 5 U.S.C. 551 *et seq.*, and more specifically

5 U.S.C. 552 (before amended on November 21, 1974, with an effective date ninety days thereafter)

5 U.S.C. 553

The specific statutes are identified and submitted as Appendix "D".

STATEMENT OF THE CASE

This case arises under 7 U.S.C. 181, *et seq.*, Packers and Stockyards Act of 1921, hereinafter referred to as the Act. Appellant, Giles Lowery Stockyards, Inc. d/b/a Lufkin Livestock Exchange, was a corporation with a place of business at Lufkin, Texas. Appellant was engaged in the business of conducting the Lufkin Livestock Exchange, a posted stockyard under the Act; was engaged in selling livestock on a commission basis at the stockyard; and was registered with the Secretary of Agriculture as a market agency to sell livestock in commerce, 7 U.S.C. 201, 202, Appendix "D" pages A133-A134.

The present appeal began with the filing of a complaint, order of suspension and notice of hearing (hereinafter referred to as complaint), on April 13, 1973. The complaint, P&S Docket No. 4782, was filed by the Administrator, Packers and Stockyards Administration (now Packers and Stockyards—AMS) (hereinafter referred to as the Agency), United States Department of Agriculture (hereinafter referred to as the Department), as agent and designate of the Secretary of Agriculture. The basis for the complaint is found in Section 207 (e) of the Act, Appendix "D" pages A135-A136.

The complaint was issued by the Agency because: On March 23, 1973, appellant filed with the Agency a new tariff (Tariff No. IV), which was to go into effect April 16, 1973, and which would have assessed greater rates and charges for stockyard services than the tariff (Tariff No. III) then on file and in effect. The Agency concluded that a further rate increase would be unreasonable and the aforementioned complaint was issued.

The Agency suspended the ultilization of Tariff No. IV by appellant for thirty days and then again for a second thirty days by publication of the complaint in the Federal Register on May 9, 1973 (38 F.R. 12143), and then again on May 23, 1973 (38 F.R. 13590). Thereafter, Tariff No. IV became effective.

An oral hearing was conducted before Chief Administrative Law Judge John A. Campbell on June 25 and 26, 1974, in Lufkin, Texas. Robert Flournoy, Esquire, of Lufkin, Texas, represented appellant, and Thomas C. Heinz, Esquire, Office of the General Counsel, United States Department of Agriculture, Washington, D.C., represented the Agency. The purpose of the hearing was to determine whether the schedule of rates and charges as set forth in appellant's Tariff No. IV were "just, reasonable, and nondiscriminatory," per Section 206 of the Act, Appendix "D" page A134.

Chief Judge Campbell filed an Initial Decision and Proposed Order on August 25, 1975, in which he sustained the Agency's position to all of the issues, and concluded that the rates and charges proposed by the Agency in the administrative proceeding, which are lower than those charged by appellant in its Tariff No. IV, "are reasonable and non-discriminatory, and are the rates and charges which appellant should assess for its services and the use of its facilities", Initial Decision, pp 35-36, Appendix "C" pages A129, A130.

On October 10, 1975, the appellant appealed the Initial Decision and Proposed Order to the Judicial Officer. Final administrative authority to decide rate cases under the Packers and Stockyards Act has been delegated to the Judicial Officer 7 U.S.C. 450c-450g. Oral argument before the Judicial Officer was heard on November 21, 1975.

A tentative Decision and Order was filed February 13, 1976.

The Decision and Order of the Judicial Officer (hereinafter referred to as the Decision and Order), was entered March 26, 1976, Appendix "B".

The sequence of events can be summarized as:

1. Petitioner sought a tariff increase; e.g. Agency acceptance of its Tariff IV.

2. The Agency issued its complaint against the Petitioner.

3. The Agency applied its rate analysis to the data derived from an audit of the Petitioner's books and records.

4. The Agency calculated a reasonable revenue requirement for Petitioner's business for a base period by an application of its rate analysis to Petitioner's audited data.

5. The Agency looks at Petitioner's present and/or former tariff.

6. The Agency declared Petitioner's tariff "unjust and unreasonable". (Presumably Tariff No. IV. It must be remembered that while the Agency directed its complaint against Tariff IV, it was Tariff III that had been in effect during the audited based period. Hence, it was Tariff III that had generated the revenues to Petitioner's business during that same period.)

7. The Agency prescribed a tariff for Petitioner's business, Appendix "B" pages A98-A99.[1]

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1. 7 U.S.C. 211 states: Whenever after full hearing upon a complaint made as provided in Section 309, or after full hearing under an order for investigation and hearing made by the Secre-

(Continued on following page)

Reference Note:

A tariff is a schedule of rates and charges which a marketing business subject to the Packers and Stockyards Act, 1921, can assess a consignor who sells his livestock through the marketing business.

A percentage tariff, or a value-based tariff, is one in which the charges to the consignor are based on the amount or value for which the consignor's livestock was sold.

A per-head tariff is one in which the charges to the consignor are based on a flat-charge per head of livestock sold. Appendix "B" pages A98-A99 is an example.

The Agency's rate analysis or rate methodology can be found briefly outlined in Appendix "B", pages A22-A24.

Footnote continued—

tary on his own initiative, either in extension of any pending complaint or without any complaint whatever, the Secretary is of the opinion that any rate, charge, regulation or practice of a stockyard owner or market agency, for or in connection with the furnishing of stockyard services, is or will be unjust, unreasonable, or discriminatory, the Secretary—

(a) May determine and prescribe what will be the just and reasonable rate or charge, or rates or charges, to be thereafter in such case observed as both the maximum and minimum to be charged, and what regulation or practice is or will be just, reasonable and nondiscriminatory to be thereafter followed; and

(b) May make an order that such owner or operator (1) shall cease and desist from such violation to the extent to which the Secretary finds that it does or will exist; (2) shall not thereafter publish, demand, or collect any rate or charge for the furnishing of stockyard services more or less than the rate or charge so prescribed; and (3) shall conform to and observe the regulation or practice so prescribed.

REASONS FOR GRANTING THE WRIT OF CERTIORARI

Certiorari should be granted for a thorough consideration of the questions presented for three significant reasons:

1. The questions were not adequately considered in the forums below.

2. The consideration given these questions below was not in accord with existing precedents and statutory requirements.

3. The questions presented deal with important aspects of administrative law.

Introduction

Further perspective with regard to the questions presented is gained from:

1. The first question could be framed as: WHETHER THE AGENCY WAS REQUIRED, THROUGH PROPER NOTIFICATION AND PUBLICATION PROCEDURES, TO AFFORD THE PETITIONER THE OPPORTUNITY TO CONFORM TO AND OPERATE ITS BUSINESS IN LIGHT OF THE METHODOLOGY AND STANDARDS BY WHICH THE AGENCY VIEWED AND APPRAISED PETITIONER'S BUSINESS OPERATIONS FOR RATE REGULATION PURPOSES?

2. The Decision and Order begins, Appendix "B" page A16:

> "On March 28, 1973, respondent filed with complainant a new tariff (Tariff No. IV), which was to go into effect on April 16, 1973, and which would have assessed

greater rates and charges for auction market services than the tariff (Tariff No. III) then on file and in effect. Tariff No. III, which had been in effect since September 4, 1972, was accepted for filing by complainant on the basis of financial information contained in respondent's annual report[2] to complainant for the fiscal year ending June 30, 1972. Upon filing Tariff IV, respondent furnished no additional information in support of the increase in the rates and charges. Thereafter, complainant concluded that a further rate increase would be unreasonable, . . ."

The Agency had no regulations or published guidelines relating to data or information which a registrant, such as Petitioner, is required to submit in conjunction with a request for a tariff increase.

3. The Agency's rate analysis or rate methodology had not been published or announced to those whom the Agency regulated prior to the filing of the complaint against the Petitioner on April 13, 1973.

4. The Agency's rate analysis or rate methodology had not been published or announced to those whom the Agency regulated prior to the oral hearing for this cause on June 25 and 26, 1974.

5. The Agency did provide counsel for Petitioner at the oral hearing notice of its methodology for analyzing

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2. (footnote not in Decision and Order) 9 CFR 201.97 states: "Every packer, stockyard owner, market agency, dealer (except a packer buyer registered to purchase livestock for slaughter only), and licensee shall file annually with the Administration a report on prescribed forms not later than April 15 following the calendar year end or, if the records are kept on a fiscal year basis, not later than 90 days after the close of his fiscal year. The Administration on good cause shown, or on his own motion, may grant a reasonable extension of the filing date or may waive the filing of such reports in particular cases (33 F.R. 14400, Sept. 25, 1968)."

auction rates prior to the oral hearing, Appendix "A" page A11.

6. The Agency's long-standing, but unpublished and unannounced policy was to apply its rate analysis to the data of a registrant's latest annual report; see Appendix "B" page A22.

7. The Agency has published policy statements, which recognize:

(a) that Petitioner is not a public utility,

(b) that Petitioner is not a monopoly (9 CFR 203.8 (h), Appendix "D" page A140),

(c) that Petitioner is in competition with other businesses in the livestock marketing industry (CFR 203.8 (d), Appendix "D" page A138),

(d) that the Agency does not favor one marketing system over another (9 CFR 203.8 (k), Appendix "D" pages A142-A143).

I

The Agency has contended throughout that:

". . . the choice made between proceeding by general rule or by individual, ad hoc litigation is one that lies primarily in the informed discretion of the administrative agency. . .", *Securities and Exchange Commission* v. *Chenery Corp.*, 332 U.S. 194, 203, 67 S.Ct. 1575, 1580, 91 L.Ed. 1995 (1947).

See Appendix "A" page A10. And, the thrust of the examination of the "Notice Issue" by the Court of Appeals was directed toward whether counsel for the Petitioner in the oral hearing below was given sufficient notice of the Agency's rate analysis to prepare a case, Appendix "A"

page A11, see *Hill* v. *Federal Power Commission,* 335 F.2d 355 (C.A.—5th 1964), *Port Terminal Railroad Association* v. *United States,* 551 F.2d 1336 (C.A.—5th 1977). In addition, the Court of Appeals stated, with respect to the first question and the provisions of 5 U.S.C. Section 552 (a) (1) (D),

> ". . . This publication requirement applies only to an agency's 'substantive rules of general applicability' and 'statements of general policy', and the ratemaking formula at issue here did not achieve such status until the administrative decision in this case was handed down. Prior to that time, the method was a mere position or proposal, and, as such, was available upon request under 5 U.S.C. Section 552 (a) (2) (C) . . ."

Appendix "A" page A12.

II

Both the Agency and the Court of Appeals have misplaced the import of Question 1 in the order of things. Question 1 is a threshold issue which precedes the question of notice to Petitioner's counsel prior to the administrative oral hearing.

The Agency's rate analysis or ratemaking formula or the methodology which it utilizes for its rate regulation function was formulated and adopted and applied, in whole and in part, several years before the Agency issued its complaint initiating this cause.

There is nothing in the Decision and Order, Appendix "B", which points to, or hints that, the Agency's rate analysis was a "proposition" or a "proposal". Nor, has it ever been asserted that the Agency's rate analysis, or any aspect of it, was a product of the adjudicatory process of the administrative oral hearing for this cause.

A fair reading of *SEC* v. *Chenery Corp., supra,* to place the referenced material in context, will show the unavailability of that leading decision for an affirmative answer to Question 1. That decision speaks of "problems which arise in a case which the administrative agency could not reasonably foresee . . .", "Or the Agency may not have had sufficient experience with a particular problem to warrant rigidifying its tentative judgment into a hard and fast rule. Or the problem may be so specialized in nature as to be impossible of capture within the boundaries of a general rule.", at 332 U.S. 194, 202, 203, 67 S.Ct. 1575, 1580. The language of that decision in context with the situation which that agency faced simply does not mean that this Agency can utilize "ad hoc litigation" to "stamp approval" on substantive policy which it had been applying to those whom it regulated, but which it had never formally announced.

III

Additional support for Petitioner's contentions with respect to Question 1 follows:

1. The Decision and Order of the Judicial Officer quite clearly shows that the Agency's methodology was formulated and adopted and applied by the Agency as far back as at least 1970:

(a) Bad Debt Allowance—Appendix "B" page A64:

> "For many years, the Complainant removed all bad debt expenses and made no allowance for bad debt losses. *However, in 1968 or 1969,* the complainant began making an allowance based on the stockyard industry's average bad debt experience (Tr. 169)." (Emphasis added)

(b) Allowance for Use of Land—Appendix "B" page A35:

"We recommended to the administrator, the Packers and Stockyards Administration, that we adopt a method of allowing a use for land of six cents per unit. *We adopted that in approximately (in) 1969,* as I recall, and since that date all land values of stockyards is based on six cents per unit." (Emphasis added)

(c) Rate of Return on Buildings and Equipment—Appendix "B" pages A76-A77:

"This is the only allowance under complainant's auction market rate analysis which is based on a rate return times value. *Prior to about 1969,* the allowance for land was computed by multiplying the rate of return times the value of the land, but the allowance for land is now computed on the basis of the number of animal units handled at the market, which, in this case, resulted in an allowance more than three times larger than would have been determined under the *pre-1969 formula.*" (Emphasis added)

(d) Animal Units and the Formula for Determining Owner's Compensation—Appendix "B" pages A59-A61, especially page A61:

"The concept of animal unit was devised because the costs associated with the sale of different species varies according to the species; but revenue analysis requires consistent treatment of all livestock sold at a market. The conversion formula *adopted by complainant* was supported by a statistical analysis by Mr. Everett Stoddard, an Agricultural Economist for complainant." (Tr. 274-275; see also, Comp. EX. IX. pp. 9-11, attached

to stipulation 3, filed August 9, 1974) (Emphasis added)

"The complainant's present formula for computing a working owner's allowance *was adopted in 1970,* and is reviewed yearly. Mr. Jack W. Brinckmeyer, Chief of complainant's Rate Branch, testified that the formula still provides more than adequate compensation for a market's working owner." (Tr. 207-209) (Emphasis added)

See the Decision and Order Appendix "B" pages A31-A38 for the significance of the animal unit concept as it enters into a number of calculated "allowances" in the Agency's rate analysis.

It has to be clear and inescapable from this immediate discussion that the Agency's "rate analysis" was internally a fully formulated and adopted and utilized methodology from at least 1970 onward. But, it was never published or announced to those against whom it was applied, including the Petitioner.

2. The Agency utilized this methodology in initiating the following rate hearings, based on the language of 7 U.S.C. 207 (e), Appendix "D" pages A135-A136, which are a matter of public record:

(a) March 29, 1974, P&S Docket No. 4933, In re Corona Livestock Auction, Inc.;

(b) July 8, 1975, P&S Docket No. 5151, In re C. E. Mills and E. E. Mills, d/b/a Mills Auction Market;

(c) July 18, 1975, P&S Docket No. 5157, In re Robertsdale Livestock Auction, Inc.;

(d) August 8, 1975, P&S Docket No. 5164, In re Granite City Livestock Sales.

Each of these rate hearings was initiated by the Agency prior to the initial decision of the administrative law judge from the oral hearing of this cause, e.g. prior to the "rate-making formula achieving the status of a 'substantive rule of general applicability' or a 'statement of general policy' ", if we are to believe the Fifth Circuit. However, the Judicial Officer, in addition to the cases which the Agency initiated, tells us otherwise; Appendix "B" pages A22-A23.

> "6. The method followed by complainant in analyzing respondent's Tariff IV, *which is the same method followed by complainant in analyzing all auction rates* (except that usually an audit is not made), is set forth as Exhibit X attached to Stipulation 3 filed August 9, 1974 (see Tr. 10-11, 145-146; Comp. Ex. 1)." (Emphasis added)

Can there by any doubt that the Agency is applying a methodology already formulated and adopted internally?

3. In addition to the erroneous consideration of the rate analysis vis-a-vis 5 U.S.C. 552, the Court of Appeals failed to address the Agency's rate analysis or rate methodology in terms of its substantial impact and general applicability, not only to the Petitioner, but to others in the industry similarly situated, and the provisions of 5 U.S.C. 553, Appendix "D" pages A145, A146, *National Motor Freight Traffic Ass'n* v. *United States*, 268 F.Supp. 90 (D.C. D.C. 1967), affirmed 393 U.S. 18, 89 S.Ct. 49, 21 L.Ed.2d 19 (1968), *Pharmaceutical Manufacturers Ass'n* v. *Finch*, 307 F.Supp. 858 (D.C. D. Dela. 1970). Certainly, there can be no doubt that the regulation of revenues which a business can receive has a substantial impact on its private rights and obligations. Elementary fairness should require that reasonable opportunity be given for

submission of views by those materially affected, *Brokers-Dealers Trade Ass'n* v. *SEC*, 442 F.2d 132, 144 (C.A.—D.C. 1971), cert. den. 404 U.S. 828, 92 S.Ct. 63, 30 L.Ed.2d 57 (1971).

4. Additional support for a thorough consideration of Petitioner's first question is found by noticing:

(a) That in 1958 Congress amended the Packers and Stockyards Act to include Petitioner, among some 2,000 other businesses such as Petitioner's, as subject to the Act, Appendix "B" pages A50-A54.

(b) That the Agency, in the oral hearing below, was seeking a declaration that all value-based tariffs were illegal, Appendix "B" page A94, e.g. contra to the language "just, reasonable, and nondiscriminatory" of 7 U.S.C. 206, Appendix "D" page A134. This aspect becomes highlighted when the Agency again turned to "ad hoc litigation" and held a rate hearing for the four (4) marketing businesses from Arkansas, whose Petition For Writ Of Certiorari To The Eighth Circuit is now before this Court, as noted earlier, and all of whom had percentage (value-based) tariffs.

(c) That at the time of the oral hearing below, some 1200 businesses, such as Petitioner's, as registrants under and subject to the Packers and Stockyards Act, 1921, utilized some form of a value-based tariff, Appendix "B" page A93, and such tariffs had been utilized within the industry without challenge from the Agency for some 15 years.

Hence, there is a close and direct analogy to *N.L.R.B.* v. *Majestic Weaving Co.*, 355 F.2d 854 (C.A.—2nd 1966).

IV

Petitioner points to a lack of ascertainable standards as a fatal defect in the Decision and Order of the Judicial Officer, *Question 2*. A brief analysis will show the defects.

First, the Agency must find a way to declare the respective tariffs of each Petitioner "unjust and unreasonable", 7 U.S.C. 211, footnote 1, *supra*. Then, secondly, the Agency can prescribe its own tariff.

The manner of getting to an "unjust and unreasonable" tariff is to first apply the rate analysis to calculate a reasonable revenue requirement for a base period.

The revenues of the marketing business are compared to the reasonable revenue requirement. If the revenues do, or are projected to, exceed the reasonable revenue requirement, the tariff generating such revenues is deemed "unjust and unreasonable", and the Agency goes on to prescribe a tariff. This happened in the instant situation. Yet, the Agency can turn right around and prescribe a tariff which also goes over the reasonable revenue requirement, Appendix "B" pages A37-A38.

> "27. The complainant determined that the current revenue received by the respondent during the base period exceeded its reasonable revenue requirements by $29,350.83 (Fig. 1, line 36), *i.e.*, the difference between the respondent's total reasonable revenue requirements during the base period (Fig. 1, line 34), and the respondent's total revenue received during the base period (Fig. 1, line 35).
>
> "Accordingly, the complainant proposed a tariff (Com. Ex. 8) which would, if applied to the livestock receipts at respondent's auction market during the base period, *produce several thousand dollars more than the reasonable revenue requirements* of $184,824.58 (Tr. 58-59; Comp. Ex. 8) . . ." (Emphasis added)

Of what merit is the rate analysis if it can be exceeded? Where is the standard that tells us the relative importance of the rate analysis vis-a-vis the possible methods by which a business could receive revenues in excess of the reasonable revenue requirement and still be deemed to have a tariff which was "just and reasonable"? There are no such standards.

The shadow over all of this cause, and argument, is that the Petitioner never ever had a chance to operate his business with a knowledge of the Agency's rate analysis.

The Agency has the requirement to formulate and apply its rate analysis and then to be the judge of how the application of its rate analysis is to be interpreted, which it has done without prior notice of any ascertainable standards to those affected. Petitioner does not believe that such Agency action can stand in harmony with the provision of the Administrative Procedure Act, as well as our elementary concepts of due process and fairness. Without notice of either the substantive policy or its interpretation, the Petitioner has been subject to "secret law".

CONCLUSION

From the above discussion it is quite evident that the questions presented did not receive adequate consideration in the forums below. And, the questions presented deal with important aspects of administrative law with serious implications to those subject to this Agency's regulation, as well as agency regulation in general. While it may at this time be academic, one cannot address this cause in a straightforward manner without posing, at least to himself, the thought: "Just maybe, if the Petitioner had been permitted to conduct his business in light of the Agency's views on rate regulation, the complaint and oral hearing below would not have been necessary."

Respectfully submitted,

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